

**UNITED STATES COURT OF APPEALS**

**MAR 26 1999**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS GENERAL FUND,

Plaintiff-Appellee,  
v.

FLEMING COMPANIES, INC.,

Defendant-Appellant.

Nos. 97-6035, 97-6132  
(D.C. No. 96-CV-1650)  
(Western District of Oklahoma)

**ORDER AND JUDGMENT\***

Before **PORFILIO, ANDERSON, and TACHA**, Circuit Judges.

Two questions are presented by this appeal. The first is whether Oklahoma law restricts the authority to create and implement shareholder rights plans exclusively to the board of directors. The second is whether shareholders may propose resolutions requiring that shareholder rights plans be submitted to the shareholders for vote at the succeeding annual meeting. We certified these questions to the Supreme Court of the State of

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Oklahoma, and it responded “no” to the first question and “yes” to the second.

***International Brotherhood of Teamsters General Fund v. Fleming Companies, Inc.***,

No. 90,185, 1999 WL 35227 (Okla. Jan. 26, 1999). After subsequent briefing in this court by the parties, we have concluded the issues before us have been resolved by the response of the Oklahoma Supreme Court, and further proceedings are not required.

The judgment of the district court for the Western District of Oklahoma is **AFFIRMED**. Appellee’s motion for attorney fees on appeal is **GRANTED**, and the matter is **REMANDED** for determination of a reasonable amount of fees to be awarded and for entry of an appropriate judgment on the merits of this case.

ENTERED FOR THE COURT

John C. Porfilio  
Circuit Judge